

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Dublin and Santa Rosa, CA)

GRINNELL FIRE PROTECTION SYSTEM

Employer

and

Case 32-RC-4713

**SPRINKLER FITTERS AND APPRENTICES
LOCAL UNION NO. 845, SAN FRANCISCO,
CALIFORNIA, OF THE UNITED ASSOCIATION
OF JOURNEYMEN AND APPRENTICES OF
THE PLUMBING AND PIPEFITTING INDUSTRY
OF THE UNITED STATES AND CANADA, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding¹, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ A brief submitted by the Employer was duly considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.²

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer is a nation-wide organization with various facilities throughout the State of California. Certain facilities in the Employer's Pacific Region are at issue in the instant case. The Petitioner seeks to represent a unit consisting of the Employer's Dublin and Santa Rosa, California facilities. The Employer contends that only a unit consisting of its Dublin, Santa Rosa, and Sacramento, California facilities is appropriate.

The Employer's Dublin and Santa Rosa facilities constitute its Dublin district with the Santa Rosa facility being a branch office. The Dublin district employees about 70 employees at Dublin and Santa Rosa. The Employer's Sacramento facility constitutes its Sacramento district with its Fresno, California facility as a branch office. There are 20 employees employed at the Sacramento facility. The record does not indicate how many

²The parties stipulated, and I find, that the Employer, a Delaware corporation with facilities in Dublin and Santa Rosa, California, is engaged in the sale and installation of fire sprinkler and other fire protection

employees are employed at the Fresno facility. The various districts are organized as separate profit centers. Separate district managers are responsible for overseeing sales, marketing, labor relations, and construction work within the separate districts. Mike Yount is the district manager of the Dublin district which covers the California coastal region to the Oregon border in the north and moving eastward to include the Stockton, California area in the east and the Monterey, California area in the south. Ron Ricketts is the district manager of the Sacramento district which covers northeastern California from the Oregon border in the north to the Nevada border in the east and Fresno in the south. There is some geographic overlap of the districts in Stockton, Vacaville, and Fairfield, California. However, if a job is sold in one district, the sale is credited to the salesmen in that district but the cost and profit for the job are allocated to the district in which the job is performed. The Dublin district is busier and earns about twice the revenues of the Sacramento district. The Dublin, Santa Rosa, and Sacramento facilities are each approximately 80 miles apart, about one and a half hours driving time. I take administrative notice of the fact that the Fresno office is about 175 miles from the Santa Rosa, Dublin and Sacramento offices.

systems. During the calendar year immediately preceding the hearing in this case, the Employer purchased and received goods valued in excess of \$50,000 directly from outside the State of California.

Yount and Ricketts report to Mike Brown, Pacific Regional Vice President whose office is in the Dublin facility.

After an order is received, the Employer's designers draft a design plan for the fabrication of the job. Shop employees, who are employed at the Employer's Dublin shop or who are employed at its fabricating plant at the Fresno facility, pull the necessary materials, fabricate the designs, and bundle the fabrications for delivery. All of the larger jobs for both districts are fabricated out of the Fresno fabrication plant and shipped by private carrier directly to job sites in the Sacramento and Dublin districts. The smaller jobs for the Dublin district are fabricated by shop employees out of the Dublin facility.

Field crews perform the installation at the customer site. The field crews are composed of foremen, journeymen, apprentices, and helpers. The average field crew has two to five employees, although there are "crews" which are composed of only one field employee. The field crews receive their assignments from the superintendents over mobile phones and usually go directly from their homes to the assigned job sites. They drive the Employer's trucks or personal vehicles to the location where the installation is performed. Some jobs have more than one crew assigned and crews are pulled off one job and assigned to another. The superintendents are in

telephone contact with the field employees who each have pagers. Occasionally, Yount, superintendents, or shop designers stop by the job sites to monitor a job.

Sometimes the field crews fabricate the materials at the job site using threading machines to assemble the various pipes, fittings, and other materials according to the design specifications of the particular installation. At times the field crew calls in alterations in the design to the shop and the necessary materials are picked up by the field crews or are delivered to the crew by the shop employees.

In addition to separate supervision by Yount in the Dublin district and Ricketts in the Sacramento district, the Dublin district employees are also separately supervised by the managers and superintendents responsible for field operations in that district. Thus, the superintendents in the Dublin district interview and hire new employees, subject to the approval of Yount. Yount approves the initial wage rates set by the superintendents, subject to the approval of regional vice president Brown. The superintendents have the authority to assign crews of employees to different jobs, to evaluate the job performance of the employees, to discipline employees, and to terminate employees, which authority is not circumscribed by either Yount or Brown.

The Dublin district foremen are paid between \$20.00 and \$35.00 per hour. Journeyman are paid between \$18.00 and \$22.00 per hour. Apprentices are paid between \$11.00 and \$18.00 per hour. The trainees are paid between \$11.00 and \$15.00 per hour. Although the record does not contain the exact wage rates for the Sacramento district employees, Yount testified that they are paid within a similar pay range as the Dublin district employees.

The employees in the two districts receive the same benefits, including health, dental, disability, life insurance, and 401(k). They are also subject to the same overtime policies and the Employer's general rules of conduct and its employee handbook. All personnel records for employees are maintained in the district offices to which they are regularly assigned. Biweekly payroll information is sent to a central location in Los Angeles. That office generates pay checks which are returned to the local offices and are either mailed or picked up by employees.

Field employees assigned to each district can also be assigned to perform work in the geographic area of the other district. When such assignments are made the employees utilize trucks and equipment from their home district and work under the supervision of the superintendents of the district office where they are temporarily assigned. The record does not

indicate whether employees are informed about such assignments by their own superintendents or the superintendents from the other district. A majority of employees assigned to both districts live in a corridor between Sacramento to the north and the Central Valley to the south, so that assignments to either district are feasible for most employees. However, the Dublin district generates more work and the record indicates that only three field employees assigned to the Dublin district have performed work in the Sacramento district in the last three years. In contrast, of the 19 field employees assigned to work out of the Sacramento facility, in the last three years 16 have worked on jobs in the Dublin district. However, the record is unclear as to whether there is any co-mingling of district crews at the same job site at the same time. Thus, there is no indication in the record that the Sacramento crews assigned to work in the Dublin district are sent to job sites where other crews from Dublin are also working. Rather, it appears that when there are too many jobs to be covered by Dublin district crews, the work is assigned to a crew from Sacramento which crosses the geographic boundary of its home district to perform the work. Thus, a former Dublin district employee testified that between 1995 and 1997 he never worked on a job site with a Sacramento district employee, and a current Dublin district employee testified that in the 20-50 jobs he has worked on in the last year,

he has never been assigned to the same job site as any Sacramento district employees. Indeed, it is rare when field employees assigned to the same district interact with other field employees not in their crew, since they do not report to the district offices, there are no meetings scheduled of all field employees, and they receive their assignments over the phone. There have been six instances of Sacramento district crews working on Dublin district jobs in the last year. The Employer contends that instances of such assignments are becoming more frequent. Thus, in the two years prior to the six assignments in the last year, only three Sacramento crews were assigned to Dublin district jobs. Although the Employer's Fresno facility is a branch of the Sacramento district, due to the distance involved, there is no interchange of employees between the Dublin and Sacramento districts and the Fresno branch.

In addition to regular field crews, the Employer utilizes a two person underground specialty field crew. Until last year, this crew was assigned to the Sacramento district, but performed 95% of its work in the Dublin district and 5% in the Sacramento district. It has now been permanently reassigned to the Dublin district. There have also been four-five other permanent transfers between the two districts in the last two years, at the request of the employees transferred.

There was a previous bargaining relationship between the Employer and the Petitioner. Thus, prior to its 1996 decertification, the Petitioner was the certified representative of the Employer's sprinkler fitters and apprentice sprinkler fitters performing work in designated northern California counties. The unit did not encompass work performed in Sacramento.

In deciding upon the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate. P. J. Dick Contracting, 290 NLRB 150, 151 (1988). The Board, however, considers only whether the unit requested is an appropriate unit, even though the requested unit may not be the optimum or most appropriate unit for collective bargaining. Black & Decker Mfg. Co., 147 NLRB 825, 828 (1964).

In determining whether a petitioned for multi location unit is appropriate for collective bargaining, the Board examines traditional community of interest factors, including similarity in employee skills, duties, and working conditions; centralized control of management and supervision; functional integration, including employee interchange; geographic separation of facilities; collective bargaining history; extent of union organization, and employee choice. See, Macy's West, Inc. 327 NLRB 1 (1999), citing NLRB v. Carson Cable TV, 795 F.2d 879 (9th Cir. 1986).

Applying the foregoing principles, it is concluded, and the parties agree, that there is a sufficient community of interest to warrant including the Dublin and Santa Rosa facility employees of the Dublin district in the same unit. Thus, despite the 80 mile geographical separation of these two facilities, the function of both facilities is the same; both are in the same administrative grouping organized as a separate profit center from the Employer's other regional facilities; both have identical immediate supervision by construction manager Doug Glimstad, the only construction supervisor for both facilities; the work skills are essentially identical at both facilities; and employees' wages, hours, working conditions, and benefits are identical at both facilities. Moreover, there is a history of collective bargaining in a unit which has the same scope as the petitioned for unit which did not include employees working in the Sacramento district.

Although the Employer characterizes the cross district assignment of work between the two facilities as extensive interchange, the record does not establish that the employees are doing anything more than working across geographic boundaries. Thus, the record does not establish that these assignments result in any contact or interaction between the field employees from the two districts, notwithstanding that they are temporarily supervised by the other district's superintendents. In addition, due to the experience

and skills of the foreman and journeymen assigned to each crew, the record indicates that supervision by superintendents at the job sites merely consists of their occasionally stopping by to monitor the progress of a job. Furthermore, the degree of interchange, six crews in the last year, or nine crews, in the last three years from the Sacramento district to the Dublin district, and three crews in the last three years from the Dublin district to the Sacramento district, is not so significant as to require the inclusion of the Sacramento employees in the requested appropriate unit. Neither can the four to five permanent transfers sought by employees for their own convenience be given great weight in determining the degree of employee interchange. Renzetti's Market, Inc., 238 NLRB 174, 175, fn. 8 (1978).

The disparity of community of interest between the Sacramento district and Dublin district employees is demonstrated by their separate supervision. Thus, the Sacramento district employees have separate immediate supervision by their own construction manager, Paul Johnson, who reports to a separate district manager, Ricketts. Although both district managers report to the same regional vice president, Mike Brown, the record indicates that day-to-day labor relations including such functions as hiring, assignment of work, and discipline are performed independently by the district managers and construction managers.

The Employer relies on J & L Plate, Inc., 310 NLRB 429 (1993); Novato Disposal Services, Inc., 328 NLRB No. 118 (1999); and Foodland of Ravenswood, 323 NLRB 665 (1997) for the proposition that a single location unit is presumptively appropriate. However, the presumptive appropriateness of a single facility unit is inapplicable where, as here, the petitioner seeks to represent a multifacility unit. See Capitol Coors Co., 309 NLRB 322 (1992), and cases cited therein.

Based on the foregoing and the record as a whole, I find that the records reflect that the two-facility Dublin district functions as an essentially autonomous segment of the Employer's Pacific Region and that there is a strong community of interest between the employees assigned to the district's Dublin and Santa Rosa facilities. While the broader unit sought by the Employer may be an appropriate unit, it is not the only appropriate unit. In sum, similarity of employee skills and working conditions, functional integration of the Dublin and Santa Rosa facilities, the lack of substantial employee interchange between Dublin district employees and Sacramento district employees, day-to-day supervision of district employees by district managers combined with a history of collective bargaining within the Dublin district warrant a finding that the petitioned for multilocation unit

is an appropriate unit. See Macy's West, Inc., 327 NLRB No 201 (1999); Capitol Coors Co., *supra*.

The remaining point at issue is whether the shop employees should be included in the unit. The Employer contends that they share a sufficient community of interest with the field employees to warrant their inclusion, while the petitioner contends that their inclusion is inappropriate.

As stated above, Dublin shop employees fabricate the designs drafted by the Employer's designers. They also deliver the bundled fabrications in the Employer's trucks to job sites being serviced by field crews assigned to the Dublin and Santa Rosa facilities. There are four shop employees employed at the Dublin facility. There are no regular shop employees employed at the Santa Rosa facility. However, field crew apprentices assigned to the Santa Rosa facility are occasionally sent to that facility to fabricate small orders and deliver them to Dublin district job sites.

The shop employees have similar skills to the field employees. Thus, for smaller jobs, or small sections of larger jobs, the shop employees perform the same assembly function in the shop that the field crew performs in the field according to the designers' plans. In these situations, the shop employees deliver the fabrications to the site or they are picked up at the shop by field employees. Deliveries by shop employees to the sites occur

every day, and although on occasion there may be no field employees present when the delivery is made, in most situations, the shop employees interact with the field employees in making the deliveries. When the shop employees are in the shop they are able to contact the field employees since the field crews have pagers and are in contact with the shop employees by phone. The shop employees discuss the fabrications, any problems arising at the site with the materials, or any variations that the shop employees need to make in the designs.

In addition to delivering pipe to the sites throughout the district, the shop employees also assist field crews in installations in the field. The record does not establish the frequency with which shop employees assist field crews in the fields. However, they perform such functions as reading drawings, cutting pipe with a roll cutter or a band saw cutter, operating a threading machine to thread the pipes, and putting sprinkler fittings on pipes with a wrench. In addition, shop employees “clean off” jobs by bringing back to the shop any excess materials towards the end of a job.

The shop employees are supervised by Dublin district construction manager Doug Glimstad who also supervises the district’s field employees. The shop employees are hourly paid between \$12.00 and \$18.00, comparable to the wage rates of the apprentice field employees rates of

\$11.00 to \$18.00 per hour. They receive the same medical, dental, disability, 401(k), vacation, and holiday benefits as the field employees. They are subject to the same overtime and other personnel policies, including the Employer's general rules of conduct. The shop employees usually work 8 hours and their starting time is between 6:30 and 7:30 a. m., compared to the 5:00 to 7:00 a.m. starting time band for field employees. Although shop employees do not regularly take the Employer's vehicles home, compared to 75% to 90% of the field employees who drive the Employer's trucks to and from home every day, the shop employees drive the Employer's trucks when they visit the job sites. The shop employees and the field employees are required to wear Employer supplied shirts as their uniforms. Two of the four shop employees were previously employed as field employees. The field employees have a five year apprenticeship program, while the shop employees have no apprenticeship program. Shop employees may enter the field crew apprenticeship program to become field employees, although there is no evidence in the record that any shop employees have done so.

Although there is no formal apprenticeship program for shop employees, the record indicates that they perform the same sprinkler fitting functions using the same equipment as the field employees. Moreover, the

performance of their work is not limited to the shop because they actually perform sprinkler fitting duties at the job sites with field crews. In addition, field crews are assigned to go into the Santa Rosa shop to perform fabrications usually performed by shop employees. Thus, the record establishes a functional integration of shop employees and field employees. Therefore, it cannot be concluded that the field employees constitute a separate unit distinct from the work performed in the shop by the shop employees. The scope of the previously certified unit describes the unit as including sprinkler fitters and apprentice fitters and does not specifically exclude shop employees performing sprinkler fitting functions.

Based on traditional community of interest factors, including overlapping job functions, common immediate supervision, similar wages, and identical benefits, I find that the shop employees should be included in the unit herein. Cf. E. I. DuPont de Nemours and Company, 162 NLRB 413 (1966)

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time foremen, journeymen, apprentices, shop employees, and trainees employed by the Employer at its facilities located in Dublin and Santa Rosa, California; excluding all other employees, office clerical employees, sales

persons, design employees, inspectors, guards, and supervisors³ as defined in the Act.

There are approximately 74 employees in the bargaining unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.⁴ Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by SPRINKLER FITTERS AND APPRENTICES LOCAL UNION NO. 845, SAN FRANCISCO, CALIFORNIA, OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO.

LIST OF VOTERS

³ The parties stipulated that district manager Mike Yount, construction manager Doug Glimstad, and service supervisors Tom Hill and Scott Johnson possess the authority to hire, fire, assign work, and to effectively recommend the hiring and firing of employees. Accordingly, I find that the aforementioned individuals are supervisors within the meaning of Section 2(11) of the Act and they are hereby excluded from the unit.

⁴ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care 359 Facility, 315 NLRB 359, 361 n. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington, DC by March 9, 2000.

Dated at Oakland, California this 24th day of February, 2000.

/s/ James S. Scott

James S. Scott, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, California 94612-5211

32-1191

440-2900-2901
440-1760-9133-7800
440-3375-8750-7300